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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:
LAS VEGAS LAND PARTNERS, LLC,
Debtor.

Case No.: 19-15333-MKN
Chapter 7

Hearing Date: April 13, 2022
Hearing Time: 2:30 p.m.

**OPPOSITION TO MOTION TO ANNUL STAY TO VALIDATE
STATE COURT JUDGMENT**

Las Vegas Land Partners, LLC (“LVLP” or “Debtor”) and David Mitchell, party in interest, (“Mitchell”) by and through their counsel H. Stan Johnson, Esq., of the law firm of Cohen Johnson, LLC, hereby files this Opposition to RUSSEL NYPE and REVENUE PLUS, LLC (together referred to hereinafter as “Nype”)’s Motion to Annul Stay to Validate State Court Judgment (“Opposition”).

INTRODUCTION

It is black letter law that actions taken in violation of the stay imposed by Section 362 of the Bankruptcy Code are void, not merely voidable. The automatic stay imposed when a debtor files for bankruptcy protection has been recognized as one of the most critical aspects of a bankruptcy proceeding. Because the automatic stay is so central to the bankruptcy process, bankruptcy courts throughout the country have routinely declared actions taken in violation of

1 such a stay to be void.

2 Critical to this motion, the United States Bankruptcy Appellate Panel for the Ninth Circuit
 3 has recently held that a creditor's continuation of a state court fraudulent conveyance action
 4 against non-debtor entities is *a violation of the automatic stay*, even if debtor was separated out
 5 from the action. *Koeberer v. California Bank of Commerce et al. (In re Koeberer)*, BAP No. NC-
 6 21-1078-FBS, Bk. No. 20-110514, 2021 WL 5371142 at *5-6 (B.A.P. 9th Cir. Nov. 18, 2021)
 7 (citing *FDIC v. Hirsch (In re Colonial Realty Co.)*, 980 F.2d 125 (2d Cir. 1992)). The Ninth
 8 Circuit's decision in *Koeberer* is dispositive.

9
 10 The facts underlying this motion are not in dispute:

- 11 • In April 2015, Nype was awarded a judgment against the debtor in this bankruptcy
 case, Las Vegas Land Partners, LLC (“LVLP” or the “Debtor”).
- 12 • Claiming an inability to enforce that judgment, in 2017, Nype sued LVLP, as well
 as its two principals, Mitchell and Barnet Liberman (“Liberman”), and several
 related entities, asserting claims for constructive trust, fraudulent conveyance, civil
 conspiracy, declaratory relief, and alter ego.
- 13 • With Nype’s collection action pending, LVLP filed a Chapter 7 bankruptcy
 petition in August 2019, thereby triggering the automatic stay pursuant to Section
 362 of the Bankruptcy Code.
- 14 • There was no order issued in the LVLP bankruptcy case granting relief from the
 stay.
- 15 • Nonetheless, despite the imposition of the automatic stay, the state court in Nype’s
 collection action proceeded to trial on fraudulent transfer and alter ego claims
 admittedly belonging to the LVLP bankruptcy estate as against all defendants

1 other than LVLP, which resulted in a judgment in the amount of nearly \$25
 2 million.

3 It was improper, and a violation of the automatic stay, for the state court to permit Nype to
 4 proceed with respect to the fraudulent transfer and alter ego claims, which he admits belong to
 5 LVLP's bankruptcy estate.
 6

7 Following the Nevada state court's judgment in Nype's collection proceeding, Liberman
 8 filed for bankruptcy protection in the United States Bankruptcy Court for the Eastern District of
 9 New York. In that proceeding, in denying Nype's motion for summary judgment to have his
 10 Nevada judgment recognized, the Eastern District of New York held: "In light of [the lack of an
 11 order granting relief from the stay in the LVLP bankruptcy], and in light of *In re Koeberer, this*
 12 *Court cannot find, based on the current record, that the Nevada Judgment is a valid and*
 13 *enforceable judgment* entitled to collateral estoppel effect." Nype Mot. Ex. E at p.6 (emphasis
 14 added).

16 Nype, recognizing that his prosecution of the collection action against all defendants other
 17 than LVLP violated the automatic stay under dispositive Ninth Circuit law, now seeks to rectify
 18 his mistake retroactively by asking this Court to "annul" the automatic stay so as to "validate" the
 19 improper judgment issued by the Nevada State Court in the Collection Litigation.
 20

21 As set forth below, the motion to annul the automatic stay should be denied. It is black
 22 letter law that annulment of the automatic stay is an *extraordinary* measure that is *the exception*
 23 rather than the rule and is granted only in "*extreme* circumstances" not present here. Annulling
 24 the automatic stay is only appropriate in the rarest of circumstances because it is inconsistent with
 25 the purpose of the stay to give all debtors who seek the protection of bankruptcy in good faith –
 26

1 and their creditors – a “breathing spell” to allow equality of distribution to similarly situated
2 creditors.

3 While Nype contends that he is merely seeking to enforce a state court judgment against
4 certain non-debtors (including Mitchell), by his own admission, he obtained that judgment on
5 claims that ***belong to the LVL bankruptcy estate***. Indeed, Nype’s state court judgment is
6 against the transferees of alleged fraudulent transfers ***from LVL***, who were also found liable as
7 ***the alter egos of LVL***. The fact that these claims – by Nype’s own admission – belong to the
8 LVL bankruptcy estate is critical because any recovery from that judgment should be put into
9 the estate to be systematically and ***equitably*** distributed to similarly situated creditors of LVL in
10 this bankruptcy case.

12 While Nype disingenuously contends that the LVL bankruptcy estate would purportedly
13 “benefit” from the state court judgment, as Nype himself admits, he has an agreement with the
14 Trustee pursuant to which Nype would take a whopping ***fifty percent (50%)*** of any recovery from
15 the judgment ***for himself***, while the LVL bankruptcy estate would be left with the remaining
16 half for distribution to LVL’s creditors, ***including Nype***. As such, under this agreement, Nype
17 stands to recover half of the judgment recovery for himself, ***plus*** any additional recovery as a
18 creditor in this bankruptcy case (including his *pro rata* portion of the estate’s other half of the
19 judgment recovery). It would be gravely inequitable – and contrary to the purpose of the
20 automatic stay and the Bankruptcy Code generally – to allow Nype to receive such a
21 disproportionate share of the judgment recovery and unfairly put himself in a substantially better
22 position than other, similarly situated creditors. Accordingly, the motion to annul the automatic
23 stay to allow enforcement of the Nype’s state court judgment should be denied.

1 **FACTUAL BACKGROUND**

2 **I. The First Litigation Between Nype and LVLP**

3 Since the mid-1980's, Mitchell has been a real estate developer, primarily involved in real
4 estate projects in New York, Florida and New Jersey. In 2004, Mitchell and his business partner,
5 Barnet Liberman, embarked upon an ambitious plan to undertake a significant real estate
6 development in downtown Las Vegas. To that end, on August 17, 2004, Mitchell and Liberman
7 created LVLP for the purpose of acquiring individual parcels of land in downtown Las Vegas,
8 which Mitchell and Liberman hoped to combine into a large-scale real estate development.

9 In 2005, in connection with its development, LVLP (through Liberman and Mitchell) met
10 Nype. At the time, Nype was employed by or associated with a company known as First Wall
11 Street Capital International ("First Wall Street"). Thereafter, LVLP entered into a contract with
12 First Wall Street (the "FWS Agreement") to serve as an advisor on the Project. Nype was not a
13 party to the FWS Agreement. Pursuant to the FWS Agreement, First Wall Street was to be paid a
14 specified commission based upon securing equity capital and debt capital for LVLP's intended
15 development. Nype was subsequently terminated by First Wall Street. Further, the business
16 relationship between First Wall Street and LVLP never progressed.
17

18 After his termination by First Wall Street, while Nype continued to attempt to secure
19 funding and debt capital for LVLP's development, LVLP and Nype never entered into any
20 contract specifying Nype's potential compensation in the event that Nype was successful in
21 securing funding. Ultimately, LVLP entered into a purchase agreement with Forest City
22 Enterprises ("Forest City"). First Wall Street was uninvolved in this agreement, yet claimed an
23 entitlement to compensation for services rendered during the time of Nype's employment. LVLP
24 paid First Wall Street \$375,000 to resolve its claimed entitlement to compensation.
25

1 In connection with its agreement with Forest City, despite having no obligation to do so,
 2 LVLP set aside an escrow of \$430,068 as a commission to be paid to Nype for his having
 3 introduced LVLP to Forest City. While admitting that he never entered into any agreement with
 4 LVLP, Nype insisted that he was entitled to significantly more commission.

5 In late 2006 or early 2007, a dispute arose between LVLP and Nype over whether Nype
 6 was entitled to a fee for making this introduction and, if so, in what amount. Ultimately, in late
 7 2007, LVLP sued Nype seeking a declaratory judgment that it owed Nype no fee, and Nype
 8 counterclaimed seeking compensation for services rendered.

9 On April 10, 2015, the Nevada Court entered a judgment against LVLP in favor of Nype
 10 in the amount of \$2,608,797 plus interest and costs (the “LVLP Judgment”).

11 **II. The Collection Litigation**

12 In 2017, Nype sued Mitchell, Liberman, LVLP and several related entities alleging that
 13 the defendants in that action engaged in an “Asset Protection Scheme” for the purpose of
 14 frustrating Nype’s enforcement of the LVLP Judgment (the “Collection Litigation”). In the
 15 Collection Litigation, Nype asserted claims for constructive trust, fraudulent conveyance, civil
 16 conspiracy, declaratory relief, and alter ego.

17 In August 2019, while the Collection Litigation was pending, LVLP filed a petition (the
 18 “Petition”) under chapter 7 of the Bankruptcy Code (the “LVLP Bankruptcy”). As a result of the
 19 LVLP Bankruptcy, an automatic stay was entered relating to all claims asserted against LVLP.

20 After the LVLP Bankruptcy was filed, over the objection of the other defendants, the
 21 Nevada Court nonetheless continued the Collection Litigation as to Mitchell, Liberman and the
 22 various other defendants, with the exception of LVLP. The LVLP trustee intervened as a plaintiff
 23 in the Collection Litigation and filed a “complaint in intervention” on November 18, 2019.
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 27

1 On January 17, 2020, after a trial on the merits in the Collection Litigation, the Nevada
2 state court entered Amended Findings of Fact and Conclusions of Law which included a
3 judgment against Mitchell, Liberman and the other defendants, other than LVLP, in the total
4 amount of \$19,641,515.90 (the “Nevada Judgment”). Critically, there was no order granting
5 relief from the LVLP Bankruptcy stay, so as to allow the Collection Litigation to proceed.
6

7 The Bankruptcy Appellate Panel for the Ninth Circuit recently held that a creditor’s
8 continuation of a state court fraudulent conveyance action against non-debtor entities was a
9 violation of the automatic stay, even though the debtor was separated out from the action.
10 *Koeberer v. California Bank of Commerce et al. (In re Koeberer)*, BAP No. NC-21-1078-FBS,
11 Bk. No. 20-110514, 2021 WL 5371142 at *5-6 (B.A.P. 9th Cir. Nov. 18, 2021) (citing *FDIC v.*
12 *Hirsch (In re Colonial Realty Co.)*, 980 F.2d 125 (2d Cir. 1992)).
13

14 On April 1, 2021, Liberman filed a petition for relief under chapter 11 of the Bankruptcy
15 Code in the United States Bankruptcy Court for the Eastern District of New York (the “Liberman
16 Bankruptcy”). The Liberman Bankruptcy was converted to chapter 7 proceeding on June 28,
17 2021. On August 24, 2021, Nype filed a proof of claim in the Liberman Bankruptcy in the
18 amount of \$19,664,231.90, based on the Nevada Judgment. Nype subsequently filed a complaint
19 seeking non-dischargeability of the \$19,641,515.90 claim under §§ 523(a)(2)(A) and 523(a)(6) of
20 the Bankruptcy Code, and on September 23, 2021, Nype filed a motion for partial summary
21 judgment on the § 523(a)(2)(A) claim with regard only to the \$4,835,111.37 portion of the
22 Nevada Judgment resulting from Nype’s claim for fraudulent conveyance.
23

24 On December 3, 2021, the United States Bankruptcy Court for the Eastern District of New
25 York issued a Memorandum Decision and Order denying Nype’s motion for partial summary
26 judgment. Relying on the Ninth Circuit Court of Appeals’ recent decision in *Koeberer*, the
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28

1 Eastern District specifically held that: “This Court takes judicial notice of the docket in the LVLP
 2 Bankruptcy and notes that there is no order granting relief from stay to allow the Collection
 3 Litigation to proceed. In light of this fact, and in light of *In re Koeberer*, this Court cannot find,
 4 based on the current record, that the Nevada Judgment is a valid and enforceable judgment
 5 entitled to collateral estoppel effect.”
 6

ARGUMENT

I. THE NEVADA JUDGMENT VIOLATES THE AUTOMATIC STAY

9 It is black letter law that the “automatic stay plays a *vital and fundamental role* in
 10 bankruptcy.” *Hillis Motors, Inc. v. Hawaii Auto. Dealers’ Ass’n*, 997 F.2d 581, 585 (9th Cir.
 11 1993) (emphasis added). The automatic stay “is designed to effect an immediate freeze of the
 12 status quo by *precluding and nullifying post-petition actions*, judicial or nonjudicial, in
 13 nonbankruptcy fora against the debtor or *affecting the property of the estate.*” *Id.* (emphasis
 14 added). The automatic stay also “ensures that all claims against the debtor will be brought in a
 15 single forum, *the bankruptcy court.*” *Id.* (emphasis added). Not only does the automatic stay
 16 protect the debtor, it also “protects creditors as a class from the possibility that one creditor will
 17 obtain payment on its claims to the detriment of all others.” *Id.* (emphasis added). Given the
 18 sanctity of the automatic stay, “actions taken in violation of the automatic stay are *void* rather than
 19 voidable.” *Id.* at 586 (emphasis added).

22 Section 362(a) of the Bankruptcy Code describes the types of actions that are subject to
 23 the automatic stay. Subsection (a)(1) provides that the automatic stay applies to, among other
 24 things, the “*continuation . . .* of a judicial, administrative, or other action or proceeding *against*
 25 *the debtor* that was or could have been commenced before the commencement of the case under
 26 this title, or *to recover a claim against the debtor* that arose before the commencement of the case
 27

under this title[.]” 11 U.S.C. § 362(a)(1) (emphasis added). The latter category – judicial proceedings “to recover a claim against the debtor” – “must encompass cases in ***which the debtor is not a defendant***; it would otherwise be totally duplicative of the former category and pure surplusage.” *In re Koeberer*, 632 B.R. 680, 688 (9th Cir. B.A.P. 2021) (quoting *In re Colonial Realty Co.*, 980 F.2d 125, 131-32 (2d Cir. 1992)) (emphasis added).

In the Collection Litigation, Nype asserted fraudulent transfer claims against, *inter alia*, the Debtor (as transferor) and Mitchell and Liberman (as transferees). Nype also sought to pierce the Debtor’s corporate veil by alleging that the Debtor was merely the alter ego of Mitchell and Liberman. Thereafter, the Debtor filed the Petition on August 19, 2019. As Nype himself admits, “the filing of LVLP’s petition automatically stayed the [Collection] Litigation ***against LVLP***.” Nype Mot. ¶ 6 (emphasis added). Nype further admits that the LVLP bankruptcy petition automatically stayed “the ***fraudulent transfer*** action and ***alter ego*** claim” in the Collection Litigation because those claims are “property of the LVLP bankruptcy estate.” *Id.* (emphasis added).

Nype, however, contends that it was proper for him to nevertheless continue the Collection Action against Mitchell, Liberman and other non-debtor parties because the automatic stay purportedly only applied to claims ***against the Debtor***, and did not otherwise stay the fraudulent transfer and alter ego claims against the non-debtors. To the contrary, it is well settled that fraudulent transfer claims ***against the non-debtor transferee*** (such as Mitchell) are still ***property of the estate*** because the debtor “still ha[s] an interest in the transferred property that could be reached by his creditors” and “when such a debtor is forced into bankruptcy, it makes the most sense to consider the debtor as continuing to have a ‘legal or equitable interest[]’ in the property fraudulently transferred within the meaning of section 541(a)(1) of the Bankruptcy

1 Code.” *Colonial Realty*, 980 F.2d at 131 (quoting *MortgageAmerica Corp. (American Nat'l Bank v. MortgageAmerica Corp.)*, 714 F.2d 1266, 1275 (5th Cir. 1983)). As such, even though a
 2 fraudulent conveyance claim may be brought against the transferee, “it is also an action ‘to
 3 recover a claim **against the debtor**’” and therefore barred by the automatic stay. *Id.* at 132
 4 (quoting *In re Saunders*, 101 B.R. 303, 305-06 (Bankr. N.D. Fla. 1989)) (emphasis added).
 5 “Absent a claim against the debtor, there is **no independent basis for the action against the**
 6 **transferee.**” *Id.* (emphasis added).

7 As justification for his improper prosecution of “the fraudulent transfer and alter ego
 8 claims **belonging to the LVLP Bankruptcy Estate**,” Nype makes much of the fact that his
 9 counsel, the Muije Firm, agreed to “turn over to the trustee fifty percent (50%) of all funds and
 10 assets collected or recovered from the defendants attributable to any claims litigated in the
 11 [Collection] Litigation.” Nype Mot. ¶¶ 8, 14 (emphasis added). It is undisputed, however, that
 12 Nype prosecuted these “claims belonging to the LVLP Bankruptcy Estate” even though, in this
 13 bankruptcy case, “there is **no order granting relief from stay to allow the Collection Litigation to**
 14 **proceed.**” Nype Mot. Ex. E (ECF No. 94) (Mem. Decision & Order at p. 6, *Nype v. Liberman*,
 15 Adv. Proc. No. 21-8123-reg (Bankr. E.D.N.Y. Dec. 3, 2021) (emphasis added).
 16

17 As Nype himself concedes (as he must), in a recent decision, the Bankruptcy Appellate
 18 Panel for the Ninth Circuit “held that a creditor’s continuation of a state court fraudulent
 19 conveyance action **against non-debtor entities** was a violation of the automatic stay, even though
 20 **the debtor was separated out from the action.**” Nype Mot. at p. 7 (citing *Koerberer v. Cal. Bank*
 21 *of Comm. (In re Koerberer)*, 632 B.R. 680 (9th Cir. B.A.P. 2021)) (emphasis added). *Koerberer*
 22 is dispositive and compels the conclusion that the Nevada Judgment violated the automatic stay.
 23

24 Here, like *Koerberer*, a creditor (Nype) – without obtaining relief from the automatic stay
 25

1 – nevertheless continued a state court fraudulent conveyance action (the Collection Litigation)
 2 “*against non-debtor entities*” (including Mitchell, Liberman, and others) “even though *the debtor*
 3 [*LVLP*] was separated out from the action.” As such, as Nype again admits (as he must), the
 4 United States Bankruptcy Court for the Eastern District of New York found that “in light of *In re*
 5 *Koeberer*,” the Nevada Judgment is *not* a “valid and enforceable judgment” because Nype’s
 6 “continuation of a state court fraudulent conveyance action against non-debtor entities was a
 7 *violation of the automatic stay*.” Nype Mot. Ex. E at p.6 (emphasis added).

8
 9 Instead of appealing that decision in the Eastern District of New York, Nype and the
 10 Trustee instead come to this Court – contending that they “disagree” with the Eastern District of
 11 New York (without bothering to provide any rationale for their “disagreement”) – and asking that
 12 this Court effectively overrule that well-reasoned decision of a sister court by *retroactively*
 13 *annulling* the automatic stay. For the following reasons, Nype’s motion for such extraordinary
 14 and extreme relief should be denied.

15
 16 **II. THE AUTOMATIC STAY SHOULD NOT BE ANNULLED**

17
 18 Under Section 362(d) of the Bankruptcy Code, the Court may “annul” the automatic stay
 19 “for cause.” 11 U.S.C. § 362(d)(1). Such annulment “is retroactive relief, allowing the Court to
 20 validate actions taken in violation of the stay that would otherwise be void.” *In re Franco*, 574
 21 B.R. 730, 738 (Bankr. D.N.M. 2017). “Because *the stay operates as a fundamental protection*
 22 *for all parties affected by the filing of a petition in bankruptcy*, retroactive relief is an
 23 *extraordinary* measure and the circumstances that justify it are likely to be far and few between.”
 24 *In re Bright*, 338 B.R. 530, 535 (1st Cir. B.A.P. 2006) (citing *In re Soares*, 107 F.3d 969 (1st Cir.
 25 1997)) (emphasis added). “Annulling the stay is thus inconsistent with the notion that all debtors
 26 who seek the protection of bankruptcy in good faith are entitled to the ‘breathing spell’ created by
 27
 28

1 the automatic stay. Such extraordinary relief should therefore not be commonly available. If it
 2 were otherwise, the careful balance of benefits and burdens built into the Bankruptcy Code by
 3 Congress would be thrown off kilter.” *In re Siciliano*, 167 B.R. 999, 1007 (E.D. Penn. 1994). As
 4 such, “[c]ourts are in agreement that allowing retroactive relief from the stay is ***the exception***
 5 rather than the rule.” *In re Magallanez*, 403 B.R. 558, 562 (Bankr. N.D. Ill. 2009) (quoting *Will v.*
 6 *Ford Motor Credit Co. (In re Will)*, 303 B.R. 357, 368 (Bankr. N.D. Ill. 2003); *In re Scott*, 260
 7 B.R. 375, 381 (Bankr. D.S.C. 2001)) (emphasis added); *Siciliano*, 167 B.R. at 1007 (“[A]nnulling
 8 the stay is only appropriate in the rarest of circumstances.”).

9
 10 In determining whether to retroactively annul the automatic stay, the “court must be also
 11 especially hesitant to validate acts committed during the pendency of the stay and, when
 12 determining whether to do so, must be mindful of the purpose of the automatic stay.” *In Matter*
 13 *of Allied Holdings, Inc.*, 355 B.R. 372, 377 (Bankr. N.D. Ga. 2006). “Specifically, the court
 14 should be cognizant of the fact that the automatic stay is not only intended to protect the debtor
 15 from collection actions and to afford the debtor a ‘breathing spell’ in which it can reorganize, but
 16 is also ***intended to protect the interests of the debtor’s other creditors.***” *Id.* (emphasis added).
 17 “In this regard, the automatic stay is instrumental in achieving one of the primary goals of the
 18 Bankruptcy Code – ***equality of distribution to similarly situated creditors.***” *Id.* (emphasis
 19 added).
 20
 21

22 In a motion for annulment of the automatic stay, “it is the offending creditor’s burden to
 23 demonstrate that its void actions should be validated after the fact. This best harmonizes with the
 24 nature of the automatic stay and the important purposes that it serves.” *Id.* As such, where, as
 25 here, “a creditor seeks post facto annulment of the stay, it must show ***extreme circumstances***,
 26 with facts both unusual and unusually compelling.” *Id.* (emphasis added). Generally, “annulment
 27
 28

1 to validate an action in violation of the automatic stay should be limited to instances where the
 2 movant was *honestly ignorant of the stay.*" *Franco*, 574 B.R. at 738 (emphasis added).

3 Here, there is no dispute that Nype had actual notice of LVLP's bankruptcy petition and
 4 the imposition of the automatic stay, yet *never sought relief from the stay* before proceeding with
 5 the Collection Litigation. *See In re Veltmann*, No. 11-07-11370 MR, 2008 WL 5157892, at *2
 6 (Bankr. D.N.M. June 7, 2008) ("A notice of the Veltmanns' bankruptcy was filed in the District
 7 Court Action, but Hagan *did not request relief from the automatic stay* from this Court before the
 8 District Court entered its judgment. And when the District Court entered its judgment in the face
 9 of the automatic stay, Hagan *still did not seek to remedy the situation . . .*") (emphasis added).

10
 11 Indeed, Nype concedes that, given LVLP's bankruptcy petition, he knew that the
 12 automatic stay barred his prosecution of claims against LVLP. Accordingly, Nype cannot – and
 13 does not – claim to have been "honestly ignorant of the stay." Nype nevertheless proceeded with
 14 his fraudulent transfer and alter ego claims in the Collection Litigation, which *he admits belong*
 15 *to the LVLP bankruptcy estate*, without bothering to seek relief from the stay. Additionally, after
 16 obtaining the Nevada Judgment, Nype still did not bother to seek relief from the automatic stay
 17 until the Eastern District of New York shot down his effort to enforce the invalid and
 18 unenforceable Nevada Judgment.

19
 20 Nype's justification for flouting the automatic stay is that, in prosecuting the fraudulent
 21 transfer and alter ego claims that admittedly *belong to the LVLP bankruptcy estate*, he was
 22 merely seeking to collect against *the transferees* of the alleged fraudulent transfers, rather than
 23 from LVLP itself. Nype's rationale, however, has been expressly rejected as a basis to annul the
 24 automatic stay. *See In re Walker*, 91 B.R. 968, 972 (Bankr. D. Utah 1988) ("The rationale that
 25 the [creditors] provide [for annulment of the stay] is that they did not attempt to collect directly
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 27
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1 from [the debtor], but instead were attempting to collect from the recovery fund in good faith. . . .

2 ***The court cannot find that these factors are sufficiently critical to justify annulling the stay and***
 3 ***validating the judgment.*** The [creditors] had ***actual knowledge of the stay*** and the judgment
 4 upon which they seek to collect was ***declared void.***") (emphasis added).

5 Moreover, annulling the automatic stay to allow Nype's enforcement of the Nevada
 6 Judgment – to the exclusion of LVLP's other creditors – would be inconsistent with the purpose
 7 of the stay, which is “intended to protect the interests of the debtor's other creditors” and achieve
 8 “equality of distribution to similarly situated creditors.” *See Allied Holdings*, 355 B.R. at 377
 9 (denying motion to annul automatic stay). “The automatic stay allows the debtor's assets and
 10 debts to be accounted for in ***one forum***, facilitating an organized, collective plan that considers
 11 the interests of ***all parties.***” *Squire v. Stringer*, 820 F. App'x 429, 434 (6th Cir. 2020) (emphasis
 12 added). The automatic stay “helps creditors ‘preserve what remains of the debtor's insolvent
 13 estate and provide ***a systematic equitable*** liquidation procedure.” *Id.* (quoting *Chao v. Hosp.*
 14 *Staffing Servs., Inc.*, 270 F.3d 374, 382-83 (6th Cir. 2001)) (emphasis added). “Allowing a
 15 creditor [like Nype] to circumvent the automatic stay based upon ***his own judgments*** would lead
 16 to the very ‘***chaotic and uncontrolled scramble for the debtor's assets***’ the stay was designed to
 17 prevent.” *Id.* (quoting *Holtkamp v. Littlefield*, 669 F.2d 505, 508 (7th Cir. 1982)) (emphasis
 18 added).

20 While Nype disingenuously contends that the LVLP bankruptcy estate would purportedly
 21 “benefit” from the Nevada Judgment, as Nype himself admits, under his agreement with the
 22 Trustee, Nype would take a whopping ***fifty percent (50%)*** of any recovery from the Nevada
 23 Judgment – to the exclusion of LVLP's other creditors. Moreover, while the other half of any
 24 recovery from the Nevada Judgment would be distributed *pro rata* to the LVLP creditors who
 25

properly submitted claims in this bankruptcy case, those creditors *include Nype*. As such, Nype stands to recover his direct half of the Nevada Judgment, *plus* his pro rata share of the other half of the Nevada Judgment as a creditor in this bankruptcy case. It would be gravely inequitable – and contrary to the purpose of the automatic stay and the Bankruptcy Code generally – to allow Nype to receive such a disproportionate share of the Nevada Judgment to the exclusion of LVLP's similarly situated creditors. *See Allied Holdings*, 355 B.R. at 378 (“[N]o cause has been shown for permitting [the creditor] to proceed with his void judgment [in violation of the automatic stay] when doing so would put him in a better position than other, similarly situated creditors.”). Moreover, even if this Court disallowed Nype’s claim in this bankruptcy case, it would still be inequitable for Nype to receive a full half of the Nevada Judgment to the exclusion of LVLP’s other creditors. Accordingly, the Court should deny the motion to annul the automatic stay to allow enforcement of the Nevada Judgment, which has already been declared to be invalid and unenforceable.

CONCLUSION

WHEREFORE, the Debtor and Mitchell respectfully request that this Court deny Nype’s motion in all respects, and that this Court grant the Debtor and Mitchell such other and further relief as the court deems just and proper.

Dated: March 30, 2022

COHEN JOHNSON LLC

By: /s/ H. Stan Johnson
 H. Stan Johnson, Esq.
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*Attorneys for Debtor and
 Party In Interest*

CERTIFICATE OF SERVICE

I served the following documents:

1. Opposition to Motion to Annul Stay to Validate State Court Judgment

I served the above-named documents by the following means to the persons listed below:

- a. ■ ECF System:

JACOB L. HOUMAND on behalf of Trustee SHELLEY D KROHN
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MARK M. WEISENMILLER on behalf of Creditor THE LAW OFFICE OF HAYES & WELSH

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- b. ■ United States Mail, on March 30, 2022, with postage fully prepaid to:

SEE ATTACHED MATRIX

- c. Personal Service

- 1 d. Facsimile Transmission
2 e. By messenger

3 **I declare under penalty of perjury that the foregoing is true and correct.**

4 Dated: March 30, 2022

5 /s/ Sarah Gondek

6 An employee of
7 COHEN JOHNSON LLC

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COHEN JOHNSON LLC
375 E. Warm Springs Road, Suite 104
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

Label Matrix for local noticing

0978-2

Case 19-15333-mkn

District of Nevada

Las Vegas

Wed Mar 30 16:14:52 PDT 2022

REVENUE PLUS, LLC

C/O JOHN W. MUIJE, ESQ.

JOHN W. MUIJE & ASSOCIATES

1840 E. SAHARA AVE. #106

LAS VEGAS, NV 89104-3742

CBRE, INC.

1225 17TH STREET, STE. 3200

DENVER, CO 80202-5536

LAS VEGAS LAND PARTNERS, LLC

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LAS VEGAS, NV 89119-4260

THE LAW OFFICE OF HAYES & WELSH

C/O GARMAN TURNER GORDON LLP

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LAS VEGAS, NV 89119-4302

United States Bankruptcy Court

300 Las Vegas Blvd., South

Las Vegas, NV 89101-5833

Clark County Assessor

500 South Grand Central Pkwy

2nd Floor

Las Vegas, NV 89155-4502

Clark County Treasurer

c/o Bankruptcy Clerk

500 S. Grand Central Pkwy

Box 551220

Las Vegas, NV 89155-1220

Dept. of Employment Train Rehabilitation

500 E. Third St.

Carson City, NV 89701-4772

Hayes & Welsh

199 N Arroyo Grande Blvd.

Henderson, NV 89074-1609

(p) INTERNAL REVENUE SERVICE

CENTRALIZED INSOLVENCY OPERATIONS

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PHILADELPHIA PA 19101-7346

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New York, NY 10158-0038

Massachusetts Department of Revenue

Bankruptcy Unit

P.O. Box 9564

100 Cambridge Street, 7th Floor

Boston, MA 02114-2509

Nevada Department of Taxation

1550 College Parkway, Ste. 115

Carson City, NV 89706-7939

Piercy Bowler Taylor & Kern

6100 Elton Ave., Suite 1000

Las Vegas, NV 89107-0123

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c/o Muije & Associates

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Russell L. Nyce

c/o Muije & Associates

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16 Village Court

Hazlet, NJ 07730-1531

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Attn: Legal Division

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Carson City, NV 89711-0725

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United States Trustee

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Veritex

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SHELLEY D KROHN

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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Internal Revenue Service	End of Label Matrix
Centralized Insolvency Operations	Mailable recipients 27
P.O. Box 21126	Bypassed recipients 0
Philadelphia, PA 19114-0326	Total 27